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4 Department of Business Oversight
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:)	OAH CASE NO. 2019010005
)	
12 THE COMMISSIONER OF BUSINESS)	CRMLA LICENSE NO.: 413-1030
13 OVERSIGHT,)	CFL LICENSE NO.: 603-H496
)	
14 Complainant,)	
)	SETTLEMENT AGREEMENT
15 v.)	
)	
16 360 MORTGAGE GROUP, LLC,)	
)	
17 Respondent.)	
)	

19
20 This Settlement Agreement (Agreement) is entered into by and between 360 Mortgage
21 Group, LLC (360) and Complainant the Commissioner of Business Oversight (Commissioner), and
22 is made with respect to the following facts:

23 **I.**

24 **RECITALS**

25 A. The Department of Business Oversight (Department), through the Commissioner, has
26 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
27 lending and/or servicing pursuant to the California Residential Mortgage Lending Act (CRMLA)
28

1 (Financial Code §50000 et seq.) and lending and/or brokering under the California Financing Law
2 (CFL) (Financial Code § 22000 et seq.), including mortgage loan originators.

3 B. 360 is a corporation in good standing, duly formed and existing pursuant to the laws
4 of the State of Delaware and authorized to conduct business in the State of California.

5 C. 360 is a residential mortgage lender and servicer licensed by the Commissioner
6 pursuant to the CRMLA. 360 has its principal place of business located at 11305 Four Points Drive,
7 Building 1, Suite 200, Austin, Texas 78726. 360 does not currently have any branch office locations
8 under its CRMLA license. 360 employs mortgage loan originators in its CRMLA business.

9 D. 360 is also licensed by the Commissioner as a finance lender and broker pursuant to
10 the CFL. 360 has its principal place of business under the CFL also located at 11305 Four Points
11 Drive, Building 1, Suite 200, Austin, Texas 78726. 360 does not currently have any CFL branch
12 office licenses. 360 employs mortgage loan originators in its CFL business.

13 E. During a regulatory examination of 360 commenced in January 2017, the
14 Commissioner discovered that 360: (i) had failed to properly reconcile certain of its trust accounts in
15 violation of Financial Code section 50314 and California Code of Regulations, title 10, section
16 1950.314.1 due to a shortage in one of its trust accounts in violation of California Code of
17 Regulations, title 10, section 1950.314.6; and (ii) charged the borrower per diem interest in excess of
18 one day prior to the disbursement of loan proceeds in violation of Financial Code section 22161,
19 subdivision (a)(4) and Civil Code section 2948.5 in 3 of 20 funded CFL loans reviewed.

20 F. On November 1, 2018, 360 was personally served by the Commissioner with a Notice
21 of Intention to Issue Orders Suspending Residential Mortgage Lender and/or Servicer and Finance
22 Lender and/or Broker Licenses and to Levy Penalties, Accusation and accompanying documents
23 dated October 29, 2018 (Accusation). A Notice of Defense has been filed with the Commissioner
24 regarding the Accusation. A hearing is currently set before the Office of Administrative Hearings
25 for June 10 and 11, 2019.

26 G. It is the intention and desire of the parties to resolve this matter without the necessity
27 of a hearing and/or other litigation.
28

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
2 forth herein, the parties agree as follows:

3 **II.**

4 **TERMS AND CONDITIONS**

5 1. Purpose. This Agreement resolves the issues before the Commissioner of the
6 findings of the January 2017 regulatory examination of 360 set forth in in Paragraphs E and F above
7 in a manner that avoids the expense of a hearing and other possible court proceedings, protects
8 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
9 the CRMLA and the CFL.

10 2. Order to Discontinue Violations (CRMLA). In accordance with Financial Code
11 section 50321, 360 stipulates that it is ordered to discontinue violating Financial Code section 50314
12 and California Code of Regulations, title 10, sections 1950.314.1 and California Code of
13 Regulations, title 10, section 1950.314.6.

14 3. Desist and Refrain Order (CFL). In accordance with Financial Code section 22712,
15 360 stipulates that it is ordered to desist and refrain from violating Financial Code section 22161,
16 subdivision (a)(4) by way of Civil Code section 2948.5.

17 4. Administrative Penalty. 360 agrees to pay to the Commissioner the sum of
18 \$52,000.00 in administrative penalties within 5 business days of the effective date of this Agreement
19 as that date is defined in Paragraph 27 herein. The payment shall be made by electronic fund
20 transfer or cashiers' check payable to the Department of Business Oversight and shall be sent to the
21 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
22 4052.

23 5. Self-Audits – January 1, 2019 through June 30, 2019. 360 also agrees to conduct a
24 self-audit of per diem interest charges for all CFL loans originated during the period of January 1,
25 2019 through June 30, 2019 (self-audit). 360 shall submit to the Commissioner the results of the
26 self-audit (self-audit report) within 90 days of the effective date of this Agreement as that date is
27 defined in Paragraph 25 herein. The self-audit report shall include at a minimum, the total number
28 of loans made during the period, the number of loans with per diem interest overcharges, and for

1 each loan, the report shall list the borrower loan number, name, address, loan amount, loan date,
2 interest rate, disbursement date, date per diem interest commenced, per diem interest charged, daily
3 per diem interest amount, number of days per diem interest charged, number of days per diem
4 interest overcharged (if applicable), overcharge amount (if applicable), date of refund (if applicable),
5 and proof of refund (if applicable). 360 further agrees that it shall pay an administrative penalty to
6 the Commissioner, upon submission of the audit report, equal to \$200.00 for each per diem interest
7 overcharge discovered during the self-audit that was not refunded to the borrower within 30 days of
8 loan funding.

9 6. Payment of Refunds: Borrower refunds made pursuant to paragraph 5 shall include
10 interest at the rate of 10 percent per annum from the date of overcharge and shall be mailed to the
11 last known address of each borrower prior to submission of the applicable report to the
12 Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover
13 letter that states: “As a result of an examination by the Department of Business Oversight, a refund
14 or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions
15 concerning this refund, please contact (lender) at (800) XXX-XXXX.”

16 7. Outstanding Refunds. 360 shall be responsible for ensuring that any outstanding
17 refund payment owed to any borrower identified in the self-audit report described in paragraph 5
18 above or in the 2014-2018 self-audits previously submitted to the Commissioner shall be escheated
19 to the State of California pursuant to the provisions of the California Unclaimed Property Law (Code
20 Civ. Proc., § 1500 et seq.).

21 8. Consideration. In consideration of 360’s agreement to the issuance of an order to
22 discontinue violations and desist and refrain order, and other relief as provided for herein, the
23 Commissioner hereby agrees that he shall not suspend, revoke or commence other adverse
24 administrative proceedings against the CRMLA and CFL licenses of 360 as a result of this action,
25 except as provided in Paragraphs 10 - 13 of this Agreement.

26 9. Waiver of Hearing Rights. 360 acknowledges that the Commissioner is ready,
27 willing, and able to proceed with the administrative enforcement action described in Paragraphs E
28 and F above, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other

1 right to review which may be afforded pursuant to the CRMLA, the CFL, the California
2 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law;
3 and by waiving such rights, 360 effectively consents to this Agreement becoming final.

4 10. Full and Final Settlement. The parties hereby acknowledge and agree that this
5 Agreement is intended to constitute a full, final and complete resolution of the violations described
6 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
7 with these matters either under the CRMLA, the CFL, or any other provision of law, excepting
8 therefrom any proceeding to enforce compliance with the terms of this Agreement.

9 11. Failure to Comply. 360 agrees that if it fails to comply with the terms of this
10 Agreement, the Commissioner may, in addition to all other available remedies it may invoke under
11 the CRMLA and/or the CFL, summarily suspend the CRMLA and CFL licenses of 360 until 360 is
12 in compliance. 360 waives any notice and hearing rights to contest such summary suspension which
13 may be afforded under the CRMLA, the CFL, the California Administrative Procedure Act, the
14 California Code of Civil Procedure, or any other provision of law in connection therewith.

15 12. Information Willfully Withheld. This Agreement may be revoked and the
16 Commissioner may pursue and any and all remedies available under law against 360 if the
17 Commissioner discovers that 360 knowingly or willfully withheld information used and relied upon
18 in this Agreement.

19 13. Future Actions by the Commissioner. If 360 fails to comply with any of the terms of
20 this Agreement, the Commissioner may institute proceedings for any and all violations otherwise
21 resolved by this Agreement. The Commissioner reserves the right to bring any future actions against
22 360, or any of its partners, owners, officers, shareholders, directors, employees, or successors for any
23 and all unknown violations of the CRMLA and/or CFL.

24 14. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner's
25 ability to assist any other governmental agency, (city, county, state or federal) with any prosecution,
26 administrative, civil or criminal, brought by any such agency against 360, or any other person based
27 upon any of the activities alleged in this matter or otherwise.

28 15. Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.

1 16. Third Party Actions. This Agreement does not create any private rights or remedies
2 against 360, create any liability for 360, or limit defenses of 360 for any person or entity not a party
3 to this Agreement.

4 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
5 has received independent advice from its attorney(s) and/or representatives with respect to the
6 advisability of executing this Agreement.

7 18. Reliance. Each of the parties represents, warrants, and agrees that in executing this
8 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
9 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
10 this Agreement it has placed no reliance on any statement, representation, or promise of any other
11 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
12 any other person or entity to make any statement, representation or disclosure of anything
13 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
14 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
15 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

16 19. Full Integration. This Agreement is the final written expression and the complete and
17 exclusive statement of all the agreements, conditions, promises, representations, and covenants
18 between the parties with respect to the subject matter hereof, and supersedes all prior or
19 contemporaneous agreements, negotiations, representations, understandings, and discussions
20 between and among the parties, their respective representatives, and any other person or entity, with
21 respect to the subject matter covered hereby.

22 20. No Presumption from Drafting. Each of the parties acknowledges that it has had the
23 opportunity to draft, review and edit the language of this Agreement. Accordingly, the parties intend
24 that no presumption for or against the drafting party will apply in construing any part of this
25 Agreement. Accordingly, the parties waive the benefit of California Civil Code section 1654 and any
26 successor or amended statute, providing that in cases of uncertainty, language of a contract should be
27 interpreted most strongly against the party who caused the uncertainty to exist.

28 21. Waiver, Modification, and Qualified Integration. No waiver, amendment, or

1 modification of this Agreement shall be valid or binding to any extent unless it is in writing and
2 signed by all of the parties affected by it. The waiver of any provision of this Agreement shall not
3 operate to waive any other provision set forth herein.

4 22. Headings. The headings to the paragraphs of this Agreement are inserted for
5 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
6 the provisions hereof. This Agreement shall be construed and enforced in accordance with and
7 governed by California law.

8 23. Governing Law. This Agreement shall be construed and enforced in accordance with
9 and governed by California law.

10 24. Counterparts. This Agreement may be executed in one or more separate counterparts,
11 each of which when so executed, shall be deemed an original. Such counterparts shall together
12 constitute a single document.

13 25. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
14 original signature.

15 26. Voluntary Agreement. 360 enters into this Agreement voluntarily and without any
16 coercion and acknowledges that no promise, threats, or assurances about this Agreement have been
17 made by the Commissioner or any of her officers or agents.

18 27. Effective Date. This Agreement shall not become effective until signed by all parties
19 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for 360.

20 28. Notice. Any notice/report required under this Agreement shall be addressed as
21 follows:

22 To 360: Maureen F. Gorsen, Esq.
23 Alston & Bird LLP
24 1121 L Street, Suite 700
25 Sacramento, CA 95814
maureen.gorsen@alson.com

26 To the Commissioner: Judy L. Hartley, Esq.
27 Senior Counsel
28 Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

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29. Public Record. 360 acknowledges that this Agreement is and will be a matter of public record.

30. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: June 4, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: June 4, 2019

360 MORTGAGE GROUP, LLC

By _____
JONATHAN MARK GRECO, President

APPROVED AS TO FORM:

By _____
MAUREEN F. GORSEN, ESQ. attorney for
360 MORTGAGE GROUP, LLC
Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel